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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,302	12/14/2006	Garry Dean Moppett	02296.002370.	7675
5514 7590 06/09/2009 FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112				
EXAMINER				
TOUSSAINT, DALILA				
ART UNIT		PAPER NUMBER		
1794				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/541,302

Applicant(s)

MOPPETT ET AL.

Examiner

DALILA TOUSSAINT

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/86)
Paper No(s)/Mail Date 03/01/2006 and 11/08/2005
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-6, 9-10, 14-19, and 23-24, are rejected under 35 U.S.C. 102(b) as being anticipated by Giddey et al. US patent 3973044.

- a. Referring to claims 1-6, 9-10, 14-19, and 23-24, Giddey discloses a proteinaceous food product that is formed into a thin film between successive parallel rolls. The film is scraped off the last roll with a blade set at an angle to form a structure consisting of groups of many small folds (turns) interspersed on substantially larger folds as seen in figures 3-5 (Abstract). Figure 3, discloses wherein a fold is a change in direction of the thin film of at least 180° and are substantially uniformly distributed across the cross section in the thin film. On average the smaller folds have an amplitude in the range from approximately 0.1 to 0.5 millimeters "and although that range is a preferred embodiment, the

average amplitude of the smaller folds may be outside that range to obtain various final product structures. While the present invention is most applicable to a simulated meat product, the parameters of the process can be altered to obtain products of different properties," i.e., rippled wafer, confectionary product, molded confectionary product, pet food (column 4, line 60-column 5, line 1). Giddey discloses the claimed invention except for the amount of turns/ cm² that are made in the thin film, it would have been inherent to one having ordinary skill in the art at the time of the invention to adjust the physical and organoleptical properties (column 4, line 61), by adjusting the amplitude and other parameters for the intended application, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

b. Referring to claim 11, Giddy discloses the continuous proteinaceous food product that is formed into a thin film between successive parallel rolls (figure 1 and column 3)

3. Claims 1-6, 9-11, 14-19, and 23-24, are rejected under 35 U.S.C. 102(e) as being anticipated by Clarke et al. WIPO publication 03/005832 A1.

c. Referring to claims 1-6, 9-10, 14-19, and 23-24, Clarke discloses the continuous production of a regular thin film of human and pet foodstuffs (page 1, line 3-4), wherein the film is formed between successive parallel rolls (page 14, line 13-28). The film is scraped off the last roll with a doctor blade and a rotary

former is set at an angle to offer a layered or rippled product (page 20, line 23-27) as seen in figures 7-10. Figure 8, discloses wherein the thin film changes its direction at least 180° to form a ripple (turn) in the product and wherein the ripples are substantially uniformly distributed across the cross section of the thin film. Clarke discloses the claimed invention except for the amount of turns/ cm² are made in the thin film, it would have been inherent to one having ordinary skill in the art at the time of the invention to adjust the physical properties (page 20, line 21-22) of the film, by adjusting the doctor blade and the rotary former which will affect the geometric shape of the layered or rippled product produced (page 20-22), for the intended application, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

d. Referring to claim 11, Clarke discloses the continuous production of a regular thin film of human and pet foodstuffs (page 1, line 3-4), wherein the film is formed between successive parallel rolls (page 14, line 13-28).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 7-8, 12-13, and 20-22, are rejected under 35 U.S.C. 103(a) as being unpatentable over *Giddey et al.* US patent 3973044 in view of *Clarke et al.* WIPO publication 03/005832 A1 and *Biggs et al.* UK publication GB2316852.

e. Referring to claim 7 and 12, *Clarke* discloses the continuous production of a regular thin film of human and pet foodstuffs, such as wafer compositions and meat product (*Clarke*; page 18, line 7 and page 22, line 29), wherein the film is shaped into different structural arrangements (*Clarke*; page 20-22). *Giddey* discloses a proteinaceous food product that is formed into a thin film (i.e. rippled wafer, confectionary product, molded confectionary product, pet food) between successive parallel rolls (*Giddey*; abstract), wherein the diameter, length and speed of the rolls affect the shape of the thin film (*Giddey*; column 3, line 56-58). However, both *Clarke* and *Giddey* are silent to the ratio of cross sectional edge length to average cross sectional area of the formed thin film.

Biggs discloses a wafer that is shaped into any desired form, for example it can be rolled, folded, bent, etc (*Biggs*; page 4, line 10-11). In example II, *Biggs* discloses a rolled wafer wherein the length and diameter of the wafer is 11 cm

and 2 cm, respectively. The ratio of cross sectional edge length to average cross sectional area of the formed thin film wafer is equal to $2/re$ based on applicants disclosure. Regarding the thin film of Clarke and Giddy, it would have been obvious to one having ordinary skill in the art at the time of invention to include the dimension of the rolled wafer as Biggs, to reduce the tendency for the wafer to break or soften during subsequent handling (Biggs; page 4, line 19-21).

f. Referring to claims 8 and 13, Clarke and Giddey as disclosed about is silent to the ratio of cross sectional edge length to average cross sectional area of the formed thin film. However, Biggs discloses a wafer that is shaped into any desired form, for example it can be rolled, folded, bent, etc (Biggs; page 4, line 10-11). In example II, Biggs discloses a rolled wafer wherein the length and diameter of the wafer is 11 cm and 2 cm, respectively. The ratio of cross sectional edge length to average cross sectional area of the formed thin film wafer is equal to $2/re$ based on applicants disclosure. Biggs discloses the claimed invention except for the ratio recited in the instant claims. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to adjust the ratio to be at least $4/re$, since such a modification would have involved a mere change in the size of the thin film, wherein Biggs disclose that the wafer is shaped to desired form. A change in size is generally recognized as being within the level of ordinary skill in the art (MPEP 2144.04(IV)a and MPEP 2144.04(IV)b). Regarding the thin film of Clarke and

Giddy, it would have been obvious to one having ordinary skill in the art at the time of invention to include the dimension of the rolled wafer as Biggs, to reduce the tendency for the wafer to break or soften during subsequent handling (Biggs; page 4, line 19-21).

g. Referring to claims 20-22, Clarke discloses the addition of a secondary film (e.g. solid, liquid, etc.) that is added to the thin film, as layers of ice cream and chocolate (Clark; page 16, line 23-26). Biggs discloses filling a wafer during or after shaping into a desired shape with a food material e.g. ice-cream, chocolate (Biggs; page 4, line 10-25), wherein the wafer is pre-coated with a layer of chocolate as seen in example IV. Regarding the secondary references, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include layers as the instant claims, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DALILA TOUSSAINT whose telephone number is (571)270-7088. The examiner can normally be reached on Monday - Friday, 8:00 a.m. - 5:00 p.m., EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571)272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DT

/KEITH D. HENDRICKS/
Supervisory Patent Examiner, Art Unit 1794